IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No. 974-CI of 2010 in
R.F.A. No. 1652 of 1988

Date of decision: 6.10.2010

The Amritsar Diocesan Trust Association and others

.. Appellants

v.

Church Missionary Trust Association and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr.B.R.Mahajan, Advocate with
Ms. Gaganpreet Kaur, Advocate for the appellants.

Mr.J.S.Bhatia, Advocate for the respondents.

...

Rajesh Bindal J.

1. This order will answer the reference sent by the Additional District and Session Judge, Amritsar raising issue regarding jurisdiction of the court for hearing appeals against the judgment and decree of the civil court.

2. The facts in brief are that The Church Missionary Trust Associations Limited, filed a suit on 24.1.1977 under Section 92 CPC after obtaining the assent of the Advocate General Punjab, seeking various reliefs relating to Trust properties. The suit of the plaintiffs was decreed by the then Additional Senior-Sub-Judge, Amritsar, vide judgment and decree dated 16.8.1988. The aforesaid judgment and decree was challenged by The Amritsar Diocesan Trust Association and others before this Court in R.F.A. No.1652 of 1988. This Court vide order dated 11.10.2006 remitted the appeal to the learned District Judge, Amritsar for disposal in accordance with law in view of Punjab Courts (Amendment) Act, 2006. However, Additional District Judge, Amritsar, sent the reference to this Court raising an issue as to whether the appeal filed against the judgment and decree

dated 16.08.1988 passed by the Additional Senior-Sub-Judge, Amritsar, exercising the powers of District Judge is to be disposed of by the District Judge or this Court.

3. Both the learned counsels for the parties submitted that appropriate forum for hearing of appeal against the judgment and decree of the trial Court in the present case would be the Court of District Judge in terms of provisions of Punjab Courts Act, 1918. Referring to the judgment of Hon'ble the Supreme Court in Sri Jeyaram Educational Trust and Ors. v. A. G. Syed Mohideen and Ors., 2010 (1) CCC 0648, it was submitted that the jurisdiction exercised either by the District Judge or the Civil Judge in a suit filed under Section 92 CPC is independent and alternative. It is not that the Civil Judge exercises delegated power of the District Judge. Once the suit has been decided by the Civil Judge, the appeal would lie to the District Judge only.

4. Heard learned counsel for the parties and perused the paper book.

5. The issues which arise for consideration by this Court in the present reference are as to:

(i) Whether the jurisdiction exercised by the Civil Judge in a suit filed before him under Section 92 CPC is delegated power of the District Judge or independent and alternative ?

(ii) In case the suit under Section 92 CPC has been tried and decided by the Civil Judge, to which Court appeal against that judgment and decree, would be maintainable ?

Issue No. 1

6. Before I proceed to consider the aforesaid issue it would be appropriate to have a look at the relevant provisions of Section 92 CPC, which read as under:-

> "**92. Public Charities".- (i)** In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-

matter of the trust is situate, to obtain a decree".

7. Thus, as per aforesaid provision, a suit under Section 92 of CPC can be instituted in the Principal Civil Court of original jurisdiction or in any other court, empowered in that behalf by the State Government, within the local limits of whose jurisdiction the whole or any part of the subject matter of the Trust is situated.

8. Vide notification dated 25.11.1914, the Lieutenant Governor empowered all Subordinate Judges in the State of Punjab to hear suits of the character specified in Section 92 of CPC. The said notification is reproduced below:

> "No.1342 – In exercise of the powers conferred by section 92 of the Code of Civil Procedure (V of 1908), the Lieutenant Governor is pleased to empower all Subordinate Judges in the Punjab to hear suits of the character specified in that section."

9. The issue as to whether the District Courts and Subordinate Courts, empowered by the State Government, have concurrent jurisdiction to deal with the cases under Section 92 of CPC came up for consideration before the Hon'ble Supreme Court in Sri Jeyaram Educational Trust's case (supra), wherein it was opined that it gives a choice to the plaintiff. Relevant paragraphs 7 & 8 of the Judgment are extracted below:

> "7. Section 92 provides that a suit under that section can be instituted 'in the Principal Civil Court of original jurisdiction or in any other court empowered in that behalf by the State Government'. When it is read in a normal manner, it means that the suits under section 92 should be filed in the district court or in the sub-ordinate court. When the language is clear and unambiguous and when there is no need to apply the tools of interpretation, there is no need to interpret the word 'or', nor any need to read it as a substitutive word, instead of its plain and simple meaning denoting an 'alternative'.
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> 8. Assuming that there was any need for applying the principles of interpretation, let us next consider whether the word 'or' was used in Section 92 of the Code in a substitutive sense. It is clear from Section 92 of the Code that the legislature did not want to go by the general rule contained in

section 15 of the Code that every suit shall be instituted in the Court of the lowest grade competent to try it, in regard to suits relating to public Trusts. The intention of the law makers was that such suits should be tried by the District Court. At the same time, the law makers contemplated that if there was heavy work load on the District Court, the State Govt. should be enabled to empower any other court (within the local limits of whose jurisdiction, the whole or any part of the subject matter is situate), also to entertain such suits. Therefore, the word 'or" is used in the ordinary and normal sense, that is to denote an alternative, giving a choice. The provisions of section 92 do not give room for interpreting the word 'or' as a substitutive, so as to lead to an interpretation that when the Government notified any other court, such notified court alone will have jurisdiction and not the District Court. If the intention was to substitute the Court empowered by the State Govt. in place of the Principal Civil Court of Original jurisdiction, instead of the words 'may institute a suit in the Principal Civil Court of original jurisdiction or in any other court empowered in that behalf by the State Govt., the following words would have been used in the section:

'may institute a suit in the Principal Civil Court of original jurisdiction, or when any other court is empowered in that behalf by the State Government, then in such Court empowered by the State Government,'

OR

'may institute a suit in the court notified by the State Government" [Emphasis supplied]

10. In view of my aforesaid discussion and considering the judgment of Hon'ble the Supreme Court in Sri Jeyaram Educational Trust's case (supra), as far as issue No. 1 is concerned, it is held that the power exercised by the Subordinate Judges under Section 92 CPC is independent and alternative to the authority exercised by the principal court of civil jurisdiction. The Subordinate Judges are not the delegatee of that power from the District Judge.

Issue No. 2

11. As far as the issue regarding jurisdiction of the court for hearing appeals against the judgments and decrees of the civil court, the present reference was sent by Additional District Judge, Amritsar to this Court on the ground that Section 39 of Punjab Courts Act, 1918 as amended by Punjab Courts (Amendment) Act of 2006 does not in any way pertain to provisions of Section 92 of CPC. Relevant part of section 39 of Punjab Courts Act, 1918, as amended upto date is reproduced hereunder for ready reference:

> "39. Appeals from Civil Judges (Sr. Division) and Civil Judges (Jr. Division)-1): Save as aforesaid, an appeal from a decree or order of a civil and (senior divisions) and Civil Judge (Junior Division) shall lie to the District Judge irrespective of the value of the original suit.
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> (2) *****
>
> (3) *****
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> (4) All appeals from a decree or order of a Civil Judge (Senior Division) and Civil Judge (Junior Division) pending in the High Court irrespective of the value of the original suit, shall be transferred to the District Judge exercising ordinary territorial jurisdictions.
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> (5) *******"

12. A perusal of the aforesaid provision shows that appeal from the decree of Civil Judge (Senior Division) and Civil Judge (Junior Division) lies to Distt. Judge irrespective of the value of original suit.

13. Presently as per Section 18 of the Punjab Courts Act, the Courts of Civil Judge (Sr. Division) and Civil Judge (Jr. Division) are among the classes of Subordinate Courts, the designation of which were Senior Sub Judge and Sub Judge before the enactment of Punjab Act No.16 of 1995.

14. Once it has been opined while answering issue No. 1 that the power exercised by the Subordinate Judges is independent and alternative to the authority of the District Judge, in terms of the provisions of Section 39 of the Punjab Courts Act, 1918, the appeal against the judgment of the Subordinate Judge would lie to the District Judge irrespective of the valuation thereof.

15. In view of my aforesaid discussion, the matter is required to be considered in appeal by the District Judge, which is the court of competent jurisdiction to hear appeals against the judgment by the Subordinate Court under Section 92 CPC.

16. The issues raised are answered and the matter is accordingly remitted back to the learned court below.

17. The application stands disposed of.

(Rajesh Bindal)
Judge

October 06, 2010
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(Refer to Reporter)